IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2428 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HATHIBHAI CHELABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2428 of 2004

MR VIPUL S MODI for Petitioner No. 1-2

GOVERNMENT PLEADER for Respondent No. 1-4

RULE SERVED for Respondent No. 2-6

..... for Respondent No. 5,7-7/2

MR DK ACHARYA for Respondent No. 5/1-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/01/2005

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 6.12.2003/20.12.2003 passed in Revision Application No.20 of 1997 in dismissing the same and confirming the order passed by the Collector, Banaskantha dated 12.3.1996.

2. Shri Girish K Patel, Learned Advocate appearing for Shri V.S.Modi appearing for the petitioners has submitted that apart from the fact that the Revisional Authority i.e. State of Gujarat could not have dismissed the revision application confirming the order passed by the Collector, Banaskantha dated 12.3.1986, the impugned order passed by the Secretary (Appeals), Revenue Department dated 6.12.2003/20.12.2003 is required to be quashed and set aside mainly on the ground that the same is a non-speaking order and no reasons have been assigned by the Secretary (Appeals) in rejecting the revision application and confirming the order passed by the Collector, Banaskantha dated 12.3.1996. He has further submitted that the arguments on behalf of the petitioners are not properly dealt with and there is no discussion whatsoever and there is no specific finding given by the Secretary (Appeals) and except the last para of the order nothing has been stated against the impugned order passed by the Collector, Banaskantha dated 12.3.1996.

3. Shri P.K.Acharya, Learned Advocate who appears for the private respondents has submitted that these proceedings are arising out of the RTS proceedings and as such, the civil suit is already pending between the parties which is not stated and is suppressed by the petitioners and therefore, it is requested that the order passed by the Secretary (Appeals) is just and proper and in accordance with law. Shri Sud, Ld. AGP has tried to support the order passed by the Secretary (Appeals). However, on going through the impugned order more particularly, last para of the order he could not properly convince this Court as to whether any reasons have been assigned by the Secretary (Appeals) or not.

4. Heard the Learned Advocates appearing for the parties.

5. From the bare reading of the impugned order dated 6.12.2003/20.12.2003, it is crystal clear that while rejecting the revision application and confirming the order passed by the Collector, Banaskantha dated 12.3.1996 no reasons have been assigned by the Secretary

(Appeals), Revenue Department, State of Gujarat and that the same is a non-speaking order. Considering the judgment of this Court in the case of Ambalal Sombhai Parmar & Others Vs. State of Gujarat & Another reported in 2004 (3) GLR Page 2397, the impugned order passed by the Secretary (Appeals) is required to be quashed and set aside and the matter is required to be remanded to the Secretary (Appeals) for deciding the same afresh in accordance with law on merits. It will be open for the private respondents to contend and submit before the Secretary (Appeals) with regard to filing of the civil suit which may also be considered by the Secretary (Appeals) at the time of deciding the revision application on remand. For the reasons stated above, the impugned order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 6.12.2003/20.12.2003 in Revision Application No.20 of 1997 is hereby quashed and set aside and the matter is remanded to the Secretary (Appeals) for deciding the same afresh in accordance with law and on merits and to pass a speaking reasoned order as stated above. Rule is made absolute to the aforesaid extent with no order as to costs. The Additional Secretary (Appeals) is directed to decide and dispose of the aforesaid revision application within a period of 8 weeks from the date of receipt of tis order and until then the parties are directed to maintain status quo with regard to the revenue records till the matter is decided by the Secretary (Appeals).

(M.R.Shah, J)
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